

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

In re ROBERT GARVIN MOORE,

CASE NO. 21-05529 RJB

Debtor.

ROBERT GARVIN MOORE; TERESA
JEAN MOORE,

Bk. No. 19-43563 BDL

Adversary No. 20-04017 BDL

Appellants.

FLAGSTAR BANK FSB, WRIGHT FINLAY & ZAK LLP, JOSEPH T. McCORMICK, III, TOM B. PIERCE, LISA ARMENIO REIS, PAUL KIM REIS, KELLER WILLIAMS PREMIER PARTNERS, PAMELA McANALLY, JEFFREY MERRITT WILSON,

ORDER ON MOTION FOR
EXPANSION OF THE APPEAL
RECORD AND ON APPEAL

Appellees.

This matter comes before the Court on Robert Garvin Moore and Teresa Jean Moore’s (collectively the “Moores”) appeal of six orders of the U.S. Bankruptcy Court in *In re Moore*, Western District of Washington Adversary Proceeding No. 20-04017 BDL (Dkts. 47, 49, 85, 173, 183, and 208) (“Adversary Proceeding”) and the Moores’ Motion for Expansion of the Record on Appeal (Dkt. 35). The Court has considered the pleadings filed regarding the appeal and motion and the remaining record.

1 The Moores bring this appeal *pro se* and seek to expand the record. Dkt. 35. For the
 2 reasons provided below, their motion to expand the record (Dkt. 35) should be denied and their
 3 appeal dismissed. This case should be closed.

4 **I. BACKGROUND FACTS AND PROCEDURAL HISTORY**

5 Citations to the record in this case appear as “Dkt.” and citations to the record in the
 6 Adversary Proceeding appear as “AP Dkt.” Citations to other cases will be proceeded by the full
 7 case citation.

8 This appeal centers on property located in Battle Ground, Washington which was
 9 purchased in 2008 by Appellees Lisa Armenio-Reis and Paul Reis (collectively “Reises”). Dkt.
 10 1. It is an appeal from the dismissal of adversary claims filed against Flagstar Bank, FSB (the
 11 mortgagee on the Battle Ground property), bank employee Tom B. Pierce, a law firm and
 12 lawyers representing Flagstar Bank, FSB, Wright Finlay & Zak, LLP, Joseph T. McCormick,
 13 Laura N. Coughlin (collectively “Flagstar”), and a real estate firm and realtors, Keller Williams
 14 Premier Partners, Pamela McAnally, Jacqueline Smith and Shelly Schmits (collectively “Keller
 15 Williams”), James Welch and Jeffrey Merritt Wilson. AP Dkt. 1. (James Welch was dismissed
 16 by agreement of the parties). AP Dkt. 169, 171.

17 The Moores are subject to bar orders in multiple bankruptcy courts for bad faith filings.
 18 *See e.g., In re Robert Gavin Moore*, United States Bankruptcy Court for the Western District of
 19 Washington, case number 19-43563 BDL (April 16, 2020 order barring new bankruptcy case
 20 filings for seven-years as a sanction for bad faith); *In re Teresa Jean Moore*, United States
 21 Bankruptcy Court for the Dist. of Hawaii, case number 17-01311, (December 18, 2018 order
 22 included a five-year bar on Ms. Moore’s “refiling any bankruptcy case under any chapter in any
 23 United States Bankruptcy Court”); *In re Teresa Jean Moore and Robert Gavin Moore*, United
 24

1 States Bankruptcy Court for the Dist. of Nevada, case number 14-13791 (November 15, 2015
2 order setting two-year bar for bad faith filings).

3 This Adversary Proceeding was filed in connection with a bankruptcy case that Mr.
4 Moore filed on November 5, 2019. *In re Robert Garvin Moore*, United States Bankruptcy Court
5 for the Western District of Washington case number 19-43563 BDL.

6 The parties are familiar with the general procedural history of this Adversary Proceeding,
7 the background facts, and the Moores' lengthy history of filing bankruptcies and adversary
8 proceedings, so that information need not be repeated here.

9 The bankruptcy court entered its final order dismissing this Adversary Proceeding on July
10 9, 2021. AP Dkt. 208. The Moores timely filed their Notice of Appeal on July 23, 2021. Dkt. 1.
11 The Moores appeal the following six orders:

- 12 1. July 6, 2020 Order Dismissing Defendant Wilson (AP Dkt. 47);
- 13 2. July 8, 2020 Order Granting in part and denying in part Defendants' Flagstar Bank,
14 FSB; Wright, Finlay & Zak, LLP; Joseph T McCormick III; and Laura N. Coughlin's Motion to
15 Dismiss (AP Dkt. 49);
- 16 3. September 11, 2020 Order Granting Moving Defendants' Motion to Strike
17 Unauthorized Amendments and Dismiss Plaintiffs' Second Amended Complaint (AP Dkt. 85);
- 18 4. February 8, 2021 Order on Plaintiffs' Motion to Compel and Defendant Flagstar's
19 Motion for Protective Order (AP Dkt. 173);
- 20 5. March 15, 2021 Order Granting Motion for Summary Judgment and dismissing
21 Defendants Flagstar Bank FSB and Tom Pierce (AP Dkt. 183);
- 22 6. July 9, 2021 Order Granting Summary Judgment and Dismissing Remaining
23 Defendants (AP Dkt. 208).

Dkt. 1. The Moores fail to meaningfully assign error to the bankruptcy court's July 6, 2020 Order Dismissing Defendant Wilson (AP Dkt. 47). That order should be affirmed without further analysis.

On November 17, 2021, the Moores filed a Motion for Expansion of the Appeal Record. Dkt. 35. The Appellees oppose the motion (Dkts. 38, 39 and 40).

The Moores' Motion for Expansion of the Appeal Record should be considered first and then the Moores' appeal of the bankruptcy court orders.

II. DISCUSSION

A. JURISDICTION

Pursuant to 28 U.S.C. § 158(a), this court has jurisdiction over bankruptcy appeals. “Under that provision, an appeal of right lies from ‘final judgments, orders, and decrees’ entered by bankruptcy courts ‘in cases and proceedings.’” *Ritzen Grp., Inc. v. Jackson Masonry, LLC*, 140 S. Ct. 582, 587 (2020).

B. MOTION TO EXPAND THE RECORD

In their Motion for Expansion of the Appeal Record (Dkt. 35) the Moores seek to add 209 pages of additional information that they assert should be considered in this appeal, including purported transcripts from various court proceedings, docket sheets from other court cases, pleadings from other cases, orders in other cases, emails with various attachments, brochures, notices, agreements, and medical correspondence. Dkt. 36. The Appellees oppose the motion (Dkts. 38, 39 and 40).

Rule 8009 of the Federal Rules of Bankruptcy Procedure (“Fed. Bank. R. P.”), “Record on Appeal,” governs the designation of the record on appeal from a bankruptcy case. Under Fed. Bank. R. P. 8009(e)(2)(C), “[i]f anything material to either party is omitted from or misstated in the record by error or accident, the omission or misstatement may be corrected, and a

1 supplemental record may be certified and transmitted . . . by the court where the appeal is
 2 pending.” Rule 8009(e) is modeled on Federal Rule of Appellate Procedure 10(e). Fed. R.
 3 Bankr. P. 8009(e) Advisory Committee Notes (2014).

4 In considering Federal Rule of Appellate Procedure 10(e), “Correction or Modification of
 5 the Record,” the Ninth Circuit has limited expansion of the record to “unusual circumstances,”
 6 including “inadvertent omissions from the record,” to take judicial notice, and to “exercise
 7 inherent authority to supplement the record in extraordinary cases . . . for example when
 8 developments render a controversy moot and thus divest [the court] of jurisdiction.” *Lowry v.*
 9 *Barnhart*, 329 F.3d 1019, 1024 (9th Cir. 2003). Limiting the record to that before the trial court
 10 is “fundamental” because appellate courts “lack the means to authenticate documents.” *Id.*

11 The Moore’s Motion for the Expansion of the Appeal Record (Dkt. 35) should be denied.
 12 The Moores have failed to demonstrate that this case constitutes “unusual circumstances” which
 13 warrant expansion of the record. *Lowry*, at 1024. There is no allegation that there are
 14 inadvertent omissions from the record. They have not shown that judicial notice of the various
 15 court documents is appropriate. *Lowry*, at 1024. The Moores offer these court documents to
 16 support their interpretation of those court documents - interpretations of which the Appellees
 17 disagree. Judicial notice of those documents for purposes of this appeal is not warranted. *See*
 18 *Ohio Valley Envtl. Coal. v. Aracoma Coal Co.*, 556 f.3d 177, 217 (4th Cir. 2009)(declining to
 19 judicially notice documents when the parties reasonably disagreed about their meaning). The
 20 Moores have not shown that this is an extraordinary case such that the Court should “exercise
 21 inherent authority to supplement the record.” *Lowry*, at 1024.

22 Further, the Moores have failed to show that their proffered submissions are material to
 23 their appeal as required under Fed. Bank. R. P. 8009(e)(2)(C). Having reviewed the
 24

1 supplemental documents, the undersigned concludes that they do not help resolve the appeal.

2 The Moores' attempt to unilaterally supplement the record should be denied.

3 **C. APPEAL**

4 Rather than organize their briefs by the bankruptcy court orders (there are six) that they
 5 are challenging, the Moores raise various issues, each of which will be addressed in turn. Dkts.
 6 32 and 45.

7 1. Denial of Requests for Continuances

8 The Moores argue that the bankruptcy court erred when it denied them various
 9 continuances. Dkt. 32. It is not wholly clear to which motion for continuance they refer (they
 10 also discuss other courts' denials). In any event, they fail to show that the bankruptcy court
 11 below committed reversible error.

12 A bankruptcy court's denial of a continuance is reviewed for an abuse of discretion. *In re*
 13 *Bellow*, 544 Fed. Appx. 732, 733 (9th Cir. 2013)(citing *United States v. Flynt*, 756 F.2d 1352,
 14 1359 (9th Cir.1985). Considering the Moores' extensive history of delay tactics and lack of
 15 diligence, the great inconvenience to the bankruptcy court and opposing parties if a continuance
 16 had been granted, and the lack of harm to the Moores when the continuance was denied, the
 17 bankruptcy court did not abuse it's discretion in denying their motion[s] for continuance[s].

18 2. Summary Judgment for Keller Williams and Reises based on 11 U.S.C. §
19 362(c)(3)(A)

20 The Moores argue that the bankruptcy court erred when it granted summary judgment
 21 based on 11 U.S.C. § 362(c)(3)(A). Dkt. 32. They challenge the July 9, 2021 Order Granting
 22 Summary Judgment and Dismissing Remaining Defendants (AP Dkt. 208). *Id.*

23 Pursuant to 11 U.S.C. § 362(c)(3)(A),

24 [I]f a single or joint case is filed by . . . a debtor . . . and if a single or joint case of
 the debtor was pending within the preceding 1-year period but was dismissed . . .

1 the stay under subsection (a) with respect to any action taken with respect to a
2 debt or property securing such debt or with respect to any lease shall terminate
with respect to the debtor on the 30th day after the filing of the later case.

3 In its Memorandum Decision on Motions for Summary Judgment, the bankruptcy court
4 found that the Moore's claims (that the Appellants violated the stay in *In re Teresa Jean Moore*,
5 United States Bankruptcy Court for the Dist. of Hawaii, case number 17-01311 ("Hawaii
6 bankruptcy case") when they took action relating to the Battle Ground property) were without
7 merit because the Hawaii bankruptcy estate dissolved when the Hawaii bankruptcy case was
8 dismissed and no extension of the stay was requested under 11 U.S.C. § 362(c)(3)(A). Dkt. 1, at
9 53. The Moores argue that the bankruptcy court erred because the case filed just before the
10 Hawaii case, Ms. Moore's California bankruptcy case (*In re Teresa Jean Moore*, U.S. District
11 Court for the Northern District of California case number 16-53510 ("California bankruptcy
12 case")), was dismissed on the grounds that she was ineligible to file under 11 U.S.C. § 109(e).
13 Dkt. 32.

14 The Moores did not raise this issue with the bankruptcy court. Absent exceptional
15 circumstances, arguments raised for the first time on appeal are not considered. *Connecticut*
16 *Gen. Life Ins. Co. v. New Images of Beverly Hills*, 321 F.3d 878, 882 (9th Cir. 2003). The
17 Moores fail to show that exceptional circumstances exist here.

18 Furthermore, the Moores' argument does not have merit. Both the California bankruptcy
19 case and Hawaii bankruptcy case were dismissed. The Moores fail to show that a dismissal
20 under 11 U.S.C. § 109(e) changes the result. In any event, as pointed out by the bankruptcy
21 court below, their California bankruptcy case was dismissed on multiple grounds. The
22 bankruptcy court below properly granted summary judgment to the Keller Williams and the
23 Reises pursuant to 11 U.S.C. § 362(c)(3)(A).

1 3. Summary Judgment for Keller Williams, Reises and Flagstar based on Lack of
 2 Damages Under 11 U.S.C. § 362(k)

3 The Moores argue that the bankruptcy court below erred in granting summary judgment
 4 to the Appellees based on the Moores failure to demonstrate that they were damaged as required
 5 under 11 U.S.C. § 362(k). Dkt. 32.

6 For a person injured by a willful stay violation, 11 U.S.C. § 362(k)(1) permits recovery of
 7 “actual damages, including costs and attorneys’ fees.”

8 In granting motions for summary judgment, the bankruptcy court held that the Moores
 9 failed to show that they were damaged by the alleged stay violations, or in the case of some of
 10 the Appellees, show that the alleged stay violations were willful. Dkt. 1, at 58-61 and Dkt. 1 at
 11 92-93. The Moores do not demonstrate that the bankruptcy court erred. Their claim for
 12 attorneys’ fees and costs is without merit. While § 362(k)(1) generally permits recovery of costs
 13 and attorneys’ fees by a debtor for pursuing an action to cease violation of a stay, *Am. ’s*
 14 *Servicing Co. v. Schwartz-Tallard*, 803 F.3d 1095, 1100-01 (9th Cir. 2015), *pro se* litigants
 15 cannot recover attorneys’ fees under that statute, *Cater v. Barber*, 2016 Bankr. LEXIS 1838
 16 (B.A.P. 9th Cir. April 22, 2016). The Moores argue they suffered various health conditions they
 17 contend resulted from the alleged stay violations. Dkt. 31. They fail to point to evidence in the
 18 record before the bankruptcy court to support their contentions. To the extent they appeal
 19 dismissal of all the Appellees (in various orders of the bankruptcy court) based on the Moores
 20 failure to make the required showing under § 362(k)(1), the appeal is without merit and the
 21 orders of the bankruptcy court should be affirmed.

22 4. Summary Judgment for the Flagstar and Other Orders Related to Flagstar

23 The Moores contend that the March 15, 2021 Order granting Flagstar’s Motion for
 24 Summary Judgment (AP Dkt. 183) wasn’t appropriate on other grounds as well. Dkt. 32. They

1 contend that Flagstar did not have “standing” because it did not prove that it has any “right, title,
 2 or interest” in the Battle Ground property. *Id.* The Moores’ standing contentions are wholly
 3 without merit. They are not grounds to find that the bankruptcy court erred, and are legally and
 4 factually inaccurate.

5 The Moores’ notice of appeal lists several additional orders related to Flagstar: July 8,
 6 2020 Order Granting in part and denying in part Defendants’ Flagstar Bank, FSB; Wright, Finlay
 7 & Zak, LLP; Joseph T McCormick III; and Laura N. Coughlin’s Motion to Dismiss (AP Dkt.
 8 49); the September 11, 2020 Order Granting Moving Defendants’ Motion to Strike Unauthorized
 9 Amendments and Dismiss Plaintiffs’ Second Amended Complaint (AP Dkt. 85) and the
 10 February 8, 2021 Order on Plaintiffs’ Motion to Compel and Defendant Flagstar’s Motion for
 11 Protective Order (AP Dkt. 173).

12 The Moores fail to demonstrate that the bankruptcy court committed reversable error in
 13 any of these orders. They argue that court’s dismissal of their Second Amended Complaint was
 14 improper. The bankruptcy court below dismissed their Second Amended Complaint because
 15 their attempted amendments failed to cure the underlying pleading deficiencies and exceeded the
 16 scope of the leave that the court had granted. They fail to show that the bankruptcy court erred
 17 in its decision. The Moores fail to identify other meaningful errors in the remaining orders or do
 18 not address the orders at all. Their appeal of these orders is without merit and they should be
 19 affirmed.

20 5. Summary Judgment for the Reises

21 The Moores contend that the bankruptcy court erred in granting summary judgment for
 22 the Reises on their remaining claims in the July 9, 2021 Order Granting Summary Judgment and
 23 Dismissing Remaining Defendants (AP Dkt. 208). Dkt. 32.

The Moores fail to show that the bankruptcy court erred in dismissal of these claims. While they assert that there are issues of fact, they fail to show that those issues of fact were properly before the bankruptcy court or that they preclude summary judgment as a matter of law. The bankruptcy court's order on these claims should be affirmed.

6. Conclusion on the Appeal and Other Matters

The Moores fail to show that the bankruptcy court committed error. Their remaining contentions are without merit and do not provide grounds to overturn the decisions of the bankruptcy court. All the orders should be affirmed. This case should be closed.

III. ORDER

It is **ORDERED** that:

- Moore’s Motion for Expansion of the Record on Appeal (Dkt. 35) **IS DENIED**;
- The Moore’s appeal (Dkt. 1) **IS DISMISSED**;
- The orders of the U.S. Bankruptcy Court in *In re Moore*, Western District of Washington Adversary Proceeding No. 20-04017 BDL (Dkts. 47, 49, 85, 173, 183, and 208) **ARE AFFIRMED**; and
- This case **IS CLOSED**.

The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any party appearing *pro se* at said party's last known address.

Dated this 8th day of December, 2021.

Robert F. Bryan

ROBERT J. BRYAN
United States District Judge